

Andrej L. Stoelting (SBN 225718)
Lee W. Clark (SBN 175238)
Lisa A. Lenoci (SBN 138537)
DIMALANTA CLARK, LLP
591 Redwood Hwy, Suite 2320
Mill Valley, CA 94941-6022
(415) 381-2024 Telephone
(415) 366-8298 Facsimile
als@dimalantaclark.com
lwc@dimalantaclark.com
lal@dimalantaclark.com

Attorneys for Defendant
UNITED/ANCO SERVICES, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

STEVEN M. FREDRICKS, et al.

Plaintiff,

v.

EQUILON ENTERPRISES, LLC d.b.a.
SHELL OIL PRODUCTS U.S., et al.

Defendants.

Case No. 4:10-cv-05758 SBA

**2nd STIPULATION AND ORDER
EXTENDING DISCOVERY AND
PRETRIAL PREPARATION AND TO
RESCHEDULE JURY TRIAL DATE**

[Civ.L.R. 6-1(b) 6-2]

Trial Date: April 9, 2012

Pursuant to Civil Local Rule 6-1(b) and 6-2 of the United States District Court for the Northern District of California, it is hereby stipulated by and between Plaintiff Steven M. Fredricks ("Plaintiff"); Defendant Equilon Enterprises, LLC ("Equilon"); Defendant Certified Safety Specialists ("Certified"); and Defendant United/Anco Services, Inc. ("United/Anco"), by and through their respective counsel of record, as follows:

1 The parties have stipulated that, upon approval of the Court, dates set forth in this Court's
2 April 27, 2011 Amended Order for Pretrial Preparation (the "April 27, 2011 Order") may be
3 extended as follows:

4 **A. DEADLINE FOR JOINDER OF PARTIES/AMENDING THE PLEADINGS**

5 The deadline for joinder of parties and amending pleadings has expired and will not be
6 affected by this amended order.

7 **B. DISCOVERY CUT-OFF**

8 On **June 1, 2012**, all non-expert discovery shall be completed, including all depositions,
9 and any discovery motions must be heard on or before **June 1, 2012**.

10 **C. EXPERT DESIGNATION AND DISCOVERY**

11 On or before **June 1, 2012**, plaintiff shall disclose expert testimony and reports in
12 accordance with Federal Rule of Civil Procedure 26(a)(2) and on or before **June 1, 2012**,
13 defendants shall disclose expert testimony and reports in accordance with Federal Rule of Civil
14 Procedure 26(a)(2). Rebuttal expert disclosures shall be served on or before **July 6, 2012**, and
15 expert discovery, including expert depositions, shall be completed on or before **September 4,**
16 **2012**.

17 **D. MOTION CUT-OFF**

18 All motions, including dispositive motions, shall be heard on or before **July 24, 2012**, all
19 such motions to comply with the details of motion procedure as detailed in the April 27, 2011
20 Order for pretrial preparation.

21 **E. MANDATORY SETTLEMENT CONFERENCES**

22 All parties shall attend and participate in a mandatory settlement conference with a
23 Magistrate Judge in the period between **August 15, 2012 – September 4, 2012**.

1 **F. PRETRIAL CONFERENCE**

2 All counsel who will try the case shall appear for a pretrial conference in Courtroom 3 on
3 **October 9, 2012**, at 1:00 pm.

4 **G. PRETRIAL PREPARATION**

5 **1. Meet and Confer**

6 No later than **September 4, 2012** (35 calendar days prior to the pretrial
7 conference), counsel shall meet and confer in good faith as detailed in the April 27, 2011 Order.

8 **2. Trial Documents**

9 No later than **September 11, 2012** (28 calendar days prior to the pretrial
10 conference), counsel shall serve and file the following as detailed in the April 27, 2011 Order:

- 11 a. Joint Pretrial Statement;
- 12 b. Trial Briefs;
- 13 c. Findings of Fact (if applicable);
- 14 d. Witness List;
- 15 e. Designation of Discovery Excerpts;
- 16 f. Jury Instructions;
- 17 g. Jury Voir Dire and Verdict Forms; and
- 18 h. Exhibits.

19 **3. Motions in Limine and Objections to Evidence**

20 No later than **September 18, 2012** (21 calendar days prior to the pretrial
21 conference) shall file and serve Motions in Limine and/or Objections to Evidence as detailed in
22 the April 27, 2011 Order.

23 //

1 4. Responses to Motions in Limine and Objections to Evidence

2 No later than **September 25, 2012** (14 calendar days prior to the pretrial
3 conference) responses to motions in limine and/or objections to evidence shall be filed and
4 served as detailed in the April 27, 2011 Order.

5 5. Replies to Motions in Limine and Objections to Evidence

6 No later than **October 2, 2012** (7 calendar days prior to the pretrial conference)
7 replies to motions in limine and/or objections to evidence shall be filed and served as detailed in
8 the April 27, 2011 Order.

9 H. TRIAL DATE

10 Trial before the *JURY* will begin on **October 15, 2012**, at 8:30 am for an estimated **7-9**
11 trial days as detailed in the April 27, 2011 Order. The trial will take place in Courtroom 1 of the
12 United States Courthouse, 1301 Clay Street, 4th Floor, Oakland, California, 94612. *On the first*
13 *day of trial all parties are required to have someone personally present in the Court with full*
14 *Settlement Authority.*

15 I. TRANSCRIPTS

16 Instructions set forth as detailed in the April 27, 2011 Order.

17 J. STATUS AND DISCOVERY CONFERENCES

18 Instructions set forth as detailed in the April 27, 2011 Order.

19 K. SANCTIONS

20 Admonition set forth as detailed in the April 27, 2011 Order.

21 L. ADR PROCESS

22 The parties to commence private ADR no later than **March 30, 2012** pursuant to Civil
23 L.R. 16-8 and ADR L.R. 3-5.

1 GOOD CAUSE EXISTS FOR THE REQUESTED AMENDMENT

2 Defendant United/Anco was served the second amended complaint on August 2, 2011
3 and upon the stipulation of the parties, the United/Anco answer was filed and served on
4 September 6, 2011. Counsel has been diligently gathering information to provide responses,
5 prepare disclosures, retain and inform experts, and conduct a serious and meaningful evaluation
6 of the liability issues in the ensuing six weeks. Counsel is now receiving and reviewing
7 documents and disclosures from the parties that have been in the case since its inception and
8 communicating with counsel almost daily. Counsel have been courteous and professional in
9 providing information and still Defendant United/Anco is under serious time constraints to digest
10 the materials provided, identify and locate percipient witnesses, and obtain and process complex
11 medical records before meaningful discovery and depositions can commence.

12 This Court's April 27, 2011 Order setting forth the case schedule designated the
13 discovery cut-off to be December 30, 2011. As Defendant United/Anco filed an answer on
14 September 6, 2011, the April 27, 2011 Order closing discovery ("all discovery shall be
15 completed and all depositions taken on or before 12/30/2011") does not provide United/Anco
16 with adequate time to perform a thorough evaluation and/or locate and prepare complete and
17 accurate discovery. At present, it is counsel's understanding that no depositions have been set
18 since the witnesses are still being located and identified. In meet and confer with all counsel it is
19 apparent that, despite diligent efforts to identify and locate knowledgeable witnesses, more time
20 would appreciably improve the information to all parties and better inform the mediation effort.

21 Upon the stipulation of the parties, this matter has been ordered to private alternative
22 dispute resolution. With continued diligent action by all counsel, the matter will proceed through
23 that ADR process by March 30, 2012.

1 This is the first request to modify the Court's scheduling order in this case. This request
 2 is brought in good faith and for good cause and upon the considered stipulation of all parties.
 3 Though a trial date was previously set for April 9, 2012, and this extension will require the trial
 4 date to be rescheduled, no party will suffer prejudice, the extension is appropriate to avoid
 5 prejudice to the newly appearing party, United/Anco. The Court is assured that counsel is
 6 making all diligent efforts to move this case forward, and that this request is made because the
 7 extended schedule will provide the parties with the necessary time to prepare for mediation
 8 and/or trial.

9 IT IS SO STIPULATED.

10 Date: November 16, 2011 DIMALANTA CLARK, LLP

11 /s/ Andrej L. Stoelting

12 _____
 13 By: Andrej L. Stoelting
 Attorneys for Defendant
 UNITED/ANCO SERVICES, INC.

14 Dated: November 16, 2011 DREYER BABICH BUCCOLA WOOD, LLP

15 /s/ Christopher W. Wood

16 _____
 17 By: Christopher W. Wood
 Attorneys for Plaintiff
 STEVEN M. FREDRICKS

18 Dated: November 16, 2011 DAVIS WRIGHT TREMAINE LLP

19 /s/ Sam N. Dawood

20 _____
 21 By: Sam N. Dawood
 Attorneys for Defendant
 EQUILON ENTERPRISES LLC,
 d/b/a SHELL OIL PRODUCTS U.S.

1 Dated: November 16, 2011

MICHEL & FACKLER, A.P.C.


2 /s/ Michael D. Michel

3 By: Michael D. Michel
4 Attorneys for Defendant
CERTIFIED SAFETY SPECIALISTS

5 ORDER

6 Pursuant to stipulation and for good cause appearing, the foregoing is approved and IT IS
7 SO ORDERED.

8 Dated: _11/17/11

9 
SAUNDRA BROWN ARMSTRONG
United States District Judge

DECLARATION OF COUNSEL

I, ANDREJ L. STOELTING, do hereby declare as follows:

1. I am admitted to practice before the United States District Court for the Northern District of California, in good standing, and a partner with Dimalanta Clark, LLP, counsel for Defendant UNITED/ANCO SERVICES, INC. ("United/Anco") in the above-captioned matter.

2. On April 27, 2011, the Court issued an AMENDED ORDER FOR PRETRIAL PREPARATION in which the trial of the matter was set for April 9, 2012.

3. On June 20, 2011, the Court granted plaintiff leave to file a second amended complaint in which United/Anco was named a defendant.

4. On September 6, 2011, United/Anco first appeared in this action. As a result of its recent appearance, United/Anco has not had adequate time to investigate plaintiff's claims or to conduct discovery, only recently having received prior documents and productions to evaluate.

5. I have engaged all counsel in frequent discussions and appreciate their diligence in providing information and their patience as I have been attempting to locate percipient witnesses and responsive documents regarding the jobsite and plaintiff's incident.

6. In speaking to all counsel, I can aver that each has agreed that fair play and due process for my client would best be served by modifying the current case schedule as set forth in the preceding stipulation so that meaningful mediation may be conducted and the parties may have adequate time to prepare for complete and thorough discovery and depositions.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed this 16th day of November, 2011, at Mill Valley, California.

/s/ Andrej L. Stoelting

ANDREJ L. STOELTING

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above cause in accordance with Rule 5, Federal Rules of Civil Procedure, through ECF on November 16, 2011.

/s/ Andrej L. Stoelting

ANDREJ L. STOELTING